STATE OF NEW JERSEY
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION ON CIVIL RIGHTS
DOCKET NO. EL02WB-64324

Rachael L. Bronner and the Director of the NJ Division on Civil Rights, Complainants, v. Planet Fitness Ewing, Respondent.	Administrative Action **FINDING OF PROBABLE CAUSE**

The Director of the New Jersey Division on Civil Rights (DCR), pursuant to N.J.S.A. 10:5-14 and attendant procedural regulations, hereby finds that probable cause exists to believe that a discriminatory practice has occurred in this matter in violation of the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49.

Rachael L. Bronner (Complainant) is a Trenton resident who worked for a Ewing health club called Planet Fitness Ewing (Respondent) from June 2012 until about March 4, 2013.[1] On May 14, 2013, she filed a charge with the United States Equal Employment Opportunity Commission (EEOC) alleging that she was passed over for a promotion and subsequently fired because of her on race and gender in violation of Title VII of the Civil Rights Act of 1964.[2] Pursuant to a worksharing agreement between EEOC and the DCR, the EEOC accepted a complaint on behalf of DCR, alleging that the conduct also violated the LAD. On November 17,

[1] The DCR Director hereby intervenes as a complainant pursuant to N.J.S.A. 13:4-2.2(e). However, for purposes of this finding, "Complainant" will refer only to Ms. Bronner.

[2] EEOC Charge No. 524-2013-00633

2013, after completing its investigation, the EEOC issued a final determination concluding that there was reasonable cause to believe that Respondent discriminated against Complainant based on race and gender. When EEOC's attempts to resolve this matter through conciliation were unsuccessful, it issued a Notice of Right to Sue on November 22, 2013.

After receiving that notice, Complainant asked DCR to review her LAD claims to determine whether further DCR action was warranted. DCR reviewed the EEOC's investigation file and for the reasons discussed below, concludes that there is sufficient evidence to support a finding of probable cause under the LAD as well. In particular, DCR finds, for purposes of this disposition only, as follows.

Discussion

Complainant, who is African-American, alleged that she performed many managerial functions in her front desk position but when a manager position became available, Respondent promoted a less qualified Hispanic male and fired her weeks later for an alleged offense routinely committed by male employees without consequence.

Respondent denied the allegations of discrimination in their entirety. In its position statement, Respondent noted that Complainant was a "good employee" who interviewed well and was being considered for an assistant manager position. Respondent stated that the other candidate, Alberto Rodriguez, was a "better fit" for the manager position. Respondent wrote:

> The primary factors for choosing the other candidate over Rachel had NOTHING to do with Race or Sex and everything to do with her lack of Management experience, her age/life experience and lack of flexibility with scheduling.

Similarly, Respondent claimed that its decision to fire Complainant was unrelated to her race and gender. Respondent wrote that Complainant was fired for a "no call/no show" after she had already given her two-week notice that she would be quitting the job. Respondent wrote, "In

cases like this where any employee of ours does what we call a 'No Call/No Show' we immediately terminate the employee."

a. Promotion

The EEOC investigation found that on January 21, 2013, Respondent promoted Rodriguez to manager. On September 12, 2013, EEOC investigator Philip Dudt interviewed Respondent's Chief Operating Officer, William Cassotis, who stated that in selecting Rodriguez over Complainant, consideration was given to the notion that Rodriguez was "more mature, married, and has real bills" while Complainant was a "young girl." Cassotis told the EEOC investigator that he liked Rodriguez, and that his age and work experience were more in line with the position. Respondent provided no specific information to show that Rodriguez was more qualified than Complainant.

Complainant disputed Cassotis's claim that Rodriguez had more relevant experience. She argued that Rodriguez had been a fitness trainer before being promoted to manager and knew little of the administrative procedures required to run the operation. For example, she wrote:

> Alberto Rodriguez did not know how to draw up a membership, ring up a bottle of water at the register, cancel a member or even fill up the water spray bottles to clean the equipment. As the trainer, he was not cross trained for the front desk, and he had no clue on how to do any of the work associated with being a manager, or running the front desk.

The EEOC investigator found that Complainant "credibly confirm[ed] that she had to end up training [Rodriguez] for the position after he was placed in same," and concluded that "an analysis of the evidence as a whole confirms that [Complainant] was the better qualified candidate." In so doing, the EEOC investigator noted that there were "no written minimum

and/or preferred qualifications for this position that we can compare each individual's qualifications against."

b. Termination

Complainant claims that on February 28, 2013, she told Rodriguez that she would need to leave her shift to go to Edison the next day, and when he gave her permission to leave, he knew that it would take her some time to travel from Ewing to Edison and back. She stated that she reported to work on March 1, 2013, and punched out before heading to Edison. She said that when she returned around 1:30 p.m., she found that the front desk was sufficiently staffed, so she did not punch in again and simply left for the day. Complainant noted that she worked with Rodriguez the next day, and he gave her no indication that there was a problem with her leaving her shift early to go to Edison the previous day. Complainant said that on Monday, March 4, 2013, she called to say that she would be late, and Rodriguez told her that she did not need to come in. She was unsure whether this meant that she was fired. When she reported to work the next day, Rodriguez told her that she had been fired for leaving work on March 1 without telling him what time she would return.

Respondent asserted in its answer that Complainant was fired because she failed to show up for work. In a subsequent interview with the EEOC, Rodriguez stated that Complainant reported to work that day but at some point told him that she needed to leave. He stated that she assured him that she would be right back but did not return for the rest of the day. Cassotis told the EEOC investigator that the March 1, 2013, incident was considered a "no call/no show," and that employees are immediately fired for that type of infraction.

During the investigation, Complainant identified male employees (Andre Simmons, John Brogan) whom she claimed repeatedly failed to call in to report absences, but were retained. In

his interview with the EEOC, Rodriguez said that he could not recall if anyone was retained after a "no call/no show," and said that Brogan did not do anything like that. When asked to identify others who were discharged for only one "no call/no show," Rodriguez cited a new hire who did not report for training, and an employee who had been on staff for two or three months.

The EEOC investigator found that the circumstances surrounding Complainant's termination were "quite dubious." He found that Complainant "did not engage in a no call/no show to the extent Respondent attempts to characterize it as same," and that others had done similar things, but were not fired. He wrote:

> [Respondent]'s statement that it automatically terminates someone for a no call/no show is simply not worthy of belief, especially in the industry that [Respondent] is involved in. Indeed, [Complainant] was able to provide comparators who have done similar to what [Respondent] alleges she did who were never even disciplined, much less terminated. Nonetheless, [Complainant] credibly confirms that she did not engage in a true no call/no show . . . [S]he was ultimately terminated for an obviously bogus reason in which similarly situated individuals have engaged in same yet were not also terminated as she was.

At the conclusion of an investigation, DCR is required to determine whether "probable cause exists to credit the allegations of the verified complaint." N.J.A.C. 13:4-10.2. "Probable cause" for purposes of this analysis means a "reasonable ground of suspicion supported by facts and circumstances strong enough in themselves to warrant a cautious person in the belief that the [LAD] has been violated." Ibid. A finding of probable cause is not an adjudication on the merits, but merely an initial "culling-out process" whereby the DCR makes a preliminary determination of "whether the matter should be brought to a halt or proceed to the next step on the road to an adjudication on the merits." Frank v. Ivy Club, 228 N.J. Super. 40, 56 (App. Div. 1988), rev'd on other grounds, 120 N.J. 73 (1990), cert. den., 111 S.Ct. 799; Sprague v. Glassboro State College, 161 N.J. Super. 218, 226 (App. Div. 1978).

The "clear public policy of this State is to eradicate invidious discrimination from the workplace," Alexander v. Seton Hall, 204 N.J. 219, 228 (2010), and the LAD was enacted as remedial legislation to root out the "cancer of discrimination." Hernandez v. Region Nine Housing Corp., 146 N.J. 645, 651-52 (1996). Our courts have adhered to the Legislative mandate that the LAD be "liberally construed," N.J.S.A. 10:5-3, by consistently interpreting the LAD with a "high degree of liberality which comports with the preeminent social significance of its purposes and objects." Andersen v. Exxon Co., 89 N.J. 483 (1982); cf. Enriquez v. W. Jersey Health Sys., 342 N.J. Super. 501, 519 (App. Div.) (noting LAD's protections are broader than other anti-discrimination statutes), certif. den'd, 170 N.J. 211 (2001).

The LAD prohibits race and sex discrimination in all areas (employment, labor organizations, credit and contracting, places of public accommodations, and housing/real estate). Here, for purposes of this disposition only, DCR adopts the EEOC's findings (e.g., that male employees were retained despite failing to call in to report absences, and that Complainant was more qualified than Rodriguez for the position) and its conclusion that gender and race were determinative factors in Respondent's employment decisions. Thus, there is a "reasonable ground of suspicion supported by facts and circumstances strong enough in themselves to warrant a cautious person in the belief" that Respondent failed to promote Complainant, and then fired her, based on race and sex, in violation of the LAD. N.J.A.C. 13:4-10.2.

The LAD also prohibits employment discrimination based on age and marital status. N.J.S.A. 10:5-12(a). Here, Respondent's representative told the EEOC investigator that Complainant was not selected for the promotion because she was a "young girl," and because Rodriguez was "more mature, married, and has real bills." Likewise, in a written response to

EEOC, Respondent stated that its promotional decision had "everything to do with [Complainant's] . . . age/life experience." Complainant was unmarried and in her early 30's at the time. It thus appears that Complainant's age and marital status may have factored into Respondent's decision to promote Rodriguez over Complainant. Accordingly, the complaint is hereby amended to also allege that Respondent discriminated against Complainant based on age and marital status. Since these claims arise out of the same conduct cited in the original verified complaint, the amended complaint will relate back to the date of the original pleading. See N.J.A.C. 10:4-2.9 (b); R. 4:9-3. Based on Respondent's statements, the DCR finds a "reasonable ground of suspicion supported by facts and circumstances strong enough in themselves to warrant a cautious person in the belief" that Complainant was discriminated against in the "terms, conditions or privileges of employment" because of her age and marital status in violation of the LAD. N.J.S.A. 10:5-12(a).

WHEREFORE, it is on this 31st day of JAN, 2014, determined and found that PROBABLE CAUSE exists to credit the allegation of employment discrimination, and it is further

ORDERED that the DCR Director hereby intervenes as a complainant pursuant to N.J.S.A. 13:4-2.2(e).

Craig Sashihara, Director
NJ DIVISION ON CIVIL RIGHTS